

ASSEMBLY BILL

No. 1714

Introduced by Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

February 26, 2003

An act to amend Section 1281.6 of, and to add Section 1281.83 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1714, as introduced, Committee on Judiciary. Arbitration: consumer arbitration agreements.

Existing law provides for the enforcement of arbitration agreements and requires a court to vacate an arbitration award in specified circumstances.

This bill would specify that if a consumer arbitration agreement entered into or renewed on or after January 1, 2004, designates one or more exclusive private arbitration companies or SROs, or incorporates the arbitration rules of a private arbitration company or SRO, the consumer party has the option, after a dispute arises, to choose a different neutral private arbitration company or SRO. The bill would specify that if the agreement is entered into or renewed on or after January 1, 2004, the arbitration agreement shall plainly notify the consumer of this right, as specified, as well as of the right to obtain information about private arbitration companies. The bill would prohibit an arbitrator or private arbitration company from administering or otherwise participating in a consumer arbitration in violation of these provisions.

This bill would also prohibit a private arbitration company from making certain representations regarding consumer arbitration, adopting or enforcing specified rules governing consumer arbitration, or giving or receiving remuneration for referrals, as specified.

This bill would specify that its provisions apply to all consumer arbitration proceedings subject to the law governing the enforcement of arbitration agreements and to all consumer arbitration proceedings conducted in California.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1281.6 of the Code of Civil Procedure
2 is amended to read:
3 1281.6. *¶ (a) The Legislature finds and declares that the*
4 *public confidence in the integrity and fairness of private*
5 *contractual arbitration is fundamental to the continued vitality*
6 *and success of the process. Accordingly, it is in the public interest*
7 *to promote competition, truthfulness, and neutrality among*
8 *arbitration companies, along with voluntary and knowing party*
9 *choice in the selection of arbitration administrators. Consumer*
10 *arbitration provided by a private arbitration company that is*
11 *predesignated by a nonconsumer party without a meaningful*
12 *opportunity for the consumer to participate in the selection of the*
13 *arbitration administrator after the dispute arises is*
14 *unconscionable and contrary to public policy.*
15 *(b) Except as provided in subdivision (c), if the arbitration*
16 *agreement provides a method of appointing an arbitrator, that*
17 *method shall be followed. ¶*
18 *(c) (1) If a consumer arbitration agreement entered into or*
19 *renewed on or after January 1, 2004, designates one or more*
20 *exclusive private arbitration companies or SROs, or incorporates*
21 *the arbitration rules of a private arbitration company or SRO, the*
22 *consumer party shall have the option, after a dispute arises, to*
23 *choose a different neutral private arbitration company or SRO, as*
24 *the case may be.*
25 *(2) If a consumer arbitration agreement entered into or*
26 *renewed on or after January 1, 2004, designates one or more*
27 *exclusive private arbitration companies or SROs, or incorporates*



1 *the arbitration rules of a private arbitration company or SRO, the*
2 *arbitration agreement, in its arbitration clause, shall plainly notify*
3 *the consumer of the right to choose a different private arbitration*
4 *company or SRO, as the case may be, within the time period*
5 *provided by paragraph (3), as well as of the right to obtain*
6 *information about private arbitration companies as provided by*
7 *Section 1281.96. This notice shall also be provided to the*
8 *consumer party by the private arbitration company in the first*
9 *communication from the private arbitration company to the*
10 *consumer party regarding the arbitration, and in the rules of*
11 *procedure governing the arbitration.*

12 *(3) The option to choose a different neutral private arbitration*
13 *company may be exercised by the consumer party, within 75 days*
14 *from either the date the consumer party serves a demand for*
15 *arbitration, the date the nonconsumer party serves a demand for*
16 *arbitration specifying a private arbitration company or SRO, or*
17 *the date a court issues an order compelling arbitration. No*
18 *administration of the consumer arbitration shall be conducted*
19 *prior to the exercise of the consumer's right to choose a different*
20 *private arbitration company or SRO, or the expiration of the*
21 *period in which the consumer may exercise the right to choose a*
22 *different private arbitration company or SRO, whichever comes*
23 *first. If the consumer exercises the option to choose a different*
24 *private arbitration company or SRO, the parties may agree on an*
25 *alternative private arbitration company or SRO, or either party*
26 *may petition the court for appointment of an arbitrator pursuant*
27 *to this section.*

28 *(4) No consumer arbitration may be self-administered by a*
29 *party or the parent, subsidiary, or other legal affiliate of a party.*

30 *(5) No arbitrator or private arbitration company may*
31 *administer or otherwise participate in a consumer arbitration in*
32 *violation of this section. Any arbitration award rendered in*
33 *violation of this section may be vacated at the request of the*
34 *consumer party pursuant to Section 1286.2.*

35 *(6) This subdivision shall apply to all consumer arbitration*
36 *agreements subject to this article, and to all consumer arbitration*
37 *proceedings conducted in California.*

38 *(d) If the arbitration agreement does not provide a method for*
39 *appointing an arbitrator, the parties to the agreement who seek*
40 *arbitration and against whom arbitration is sought may agree on*

1 a method of appointing an arbitrator and that method shall be
2 followed. ~~In~~

3 (e) *In* the absence of an agreed method, or if the agreed method
4 fails or for any reason cannot be followed, or ~~when~~ *if* an arbitrator
5 appointed fails to act and his or her successor has not been
6 appointed, the court, on petition of a party to the arbitration
7 agreement, shall appoint the arbitrator.

8 ~~When~~

9 (f) *If* a petition is made to the court to appoint a neutral
10 arbitrator, the court shall nominate five persons from lists of
11 persons supplied jointly by the parties to the arbitration or obtained
12 from a governmental agency concerned with arbitration or *a*
13 private disinterested association concerned with arbitration. The
14 parties to the agreement who seek arbitration and against whom
15 arbitration is sought may within five days of receipt of notice of
16 the nominees from the court jointly select the arbitrator, whether
17 or not the arbitrator is among the nominees. If the parties fail to
18 select an arbitrator within the five-day period, the court shall
19 appoint the arbitrator from the nominees.

20 SEC. 2. Section 1281.83 is added to the Code of Civil
21 Procedure, to read:

22 1281.83. (a) A private arbitration company may not make
23 any representation regarding consumer arbitration that promises
24 or implies specific results or favoritism towards one party or
25 prospective party or one type of disputant or industry.

26 (b) A private arbitration company may not adopt or enforce any
27 rule governing consumer arbitration that is inconsistent with any
28 statement of principle, guideline, protocol, or other nonbinding
29 policy representation regarding consumer arbitration made or
30 adopted by the private arbitration company. A private arbitration
31 company may not adopt any statement of principle, guideline,
32 protocol, or other nonbinding policy statement regarding
33 consumer arbitration that is inconsistent with the rules under
34 which consumer arbitration is actually conducted or administered
35 by the private arbitration company.

36 (c) A private arbitration company may not give or receive any
37 commission, rebate, or other remuneration for the referral of
38 consumer arbitration cases, prospective consumer arbitration
39 cases, consumer arbitration parties, or prospective consumer
40 arbitration parties.



1 (d) This section applies to all consumer arbitration agreements
2 subject to this article, and to all consumer arbitration proceedings
3 conducted in California.

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